

BEFORE THE
POSTAL REGULATORY COMMISSION

Periodic Reporting (Proposal Two)

:
:
:

Docket No. RM2018-5

UNITED PARCEL SERVICE, INC.'S MOTION REQUESTING
ACCESS TO NON-PUBLIC MATERIALS UNDER
PROTECTIVE CONDITIONS
(July 11, 2018)

United Parcel Service, Inc. ("UPS") respectfully submits this Motion pursuant to 39 C.F.R. § 3001.21 and 39 C.F.R. § 3007.40 requesting access to non-public library references from Docket No. RM2018-5 (USPS-RM2018-5/NP3 and USPS-RM2018-5/NP4), which the United States Postal Service filed with the Commission on July 5, 2018 and July 11, 2018 as supporting materials for Proposal Two. UPS has conferred with the Postal Service on this issue, and the Postal Service has indicated that it has no objection to access by qualified representatives of UPS under standard protective conditions. The Postal Service has also filed a motion with the Commission reflecting its decision to file redacted versions of the library references.

UPS seeks access to the library references for its outside counsel and consultants only, so they may assist UPS in making informed comments regarding the Postal Service's petition on new sampling and weighting procedures for the city carrier portion of the In-Office Cost System ("IOCS"). See Dkt. No. RM2018-5, Order No. 4630 (June 1, 2018) (inviting comments). These outside counsel and consultants are identified in Exhibit 1, attached hereto, and each has executed a copy of the Commission's protective order conditions.

In determining whether to grant access to non-public data, the Commission “shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).” See 39 C.F.R. § 3007.42 (current regulation); see *also* 39 C.F.R. § 3007.301 (pending regulation, with similar language). UPS’s request satisfies this test. The requested materials are relevant to assessing whether the Postal Service’s proposed cost methodology is consistent with the mandate of the Postal Accountability and Enhancement Act (“PAEA”) that the Postal Service’s competitive products pay their own costs, without subsidy from market-dominant products (see 39 U.S.C. § 3633), and UPS has a substantial interest in the subject-matter of this docket.

USPS-RM2018-5/NP3 and USPS-RM2018-5/NP4 contain cost information regarding competitive products of the type provided under seal within several folders in the FY2017 Annual Compliance Report, as well as further analysis of that material.¹ Meaningful comment on whether the proposal to “change the current IOCS sample design for city carriers to a cluster sampling approach” advances the goals of PAEA will not be possible without access to these materials. See Order No. 4630.

For the foregoing reasons, UPS respectfully requests that this Motion be granted. Without the requested Non-Public Library References, UPS’s outside counsel and consultants will be required to rely on less complete data. UPS’s comments and expert materials will thus, necessarily, be more meaningful, helpful to the Commission, and complete if access to these materials is granted.

¹ See Notice of Filing of USPS-RM2018-5/NP3 and Application for Nonpublic Treatment, Dkt. No. RM2018-5 (Jul. 5, 2018), at 1; Notice of Filing of USPS-RM2018-5/NP4 and Application for Nonpublic Treatment, Dkt. No. RM2018-5 (Jul. 11, 2018), at 1.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson

Steig D. Olson

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Ave., 22nd Floor

New York, NY 10010

(212) 849-7152

steigolson@quinnemanuel.com

Attorney for UPS

Exhibit 1

1. Steig Olson
2. Christopher Seck
3. David LeRay
4. Andrew Sutton
5. Kat Lanigan
6. Kevin Neels
7. Nicholas Powers
8. Jacob Light
9. Angela Lam
10. Nathan Basch
11. Edward Cho
12. Ezra Frankel
13. Jill Moraski

Protective Conditions Statement

The Postal Service requested confidential treatment of non-public materials identified as RM2018-5/NP3 and RM2018-5/NP4 (hereinafter “these materials”) in Commission Docket No. RM2018-5.

UPS (hereinafter “the movant”) requests access to these materials related to filing its comments in the RM2018-5 docket.

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement,
- the Certification to Comply with Protective Conditions,
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission’s rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3007 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission. The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3007.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.
2. In accordance with 39 CFR 3007.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include

rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3007.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3007.300(a) (Commission and court personnel) or 3007.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3007 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3007.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3007.302(b) and (c), all persons granted access to these materials:

- a. must use these materials only related to this matter; and
- b. must protect these materials from any person not authorized to obtain access under 39 CFR 3007.300 or 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
- b. Excerpts from, parts of, or the entirety of these materials;
- c. Written materials that quote or contain these materials; and
- d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3007.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3007.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

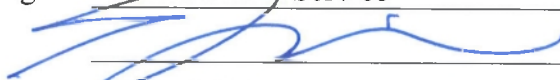
Attorney for UPS

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. RM2018-5 by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Commission Docket No. RM2018-5.

I certify that I have read and understand the protective conditions statement and this certification to comply with protective conditions. I certify that I am eligible to receive access to materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.


Name	<u>Steig Olson</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>07/03/2018</u>

CERTIFICATION

The undersigned represents that:

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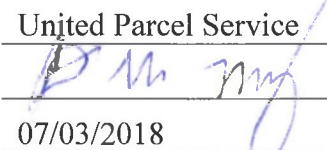
Name	<u>Christopher M. Seck</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>July 9, 2018</u>

CERTIFICATION

The undersigned represents that:

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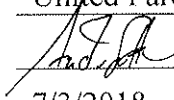
Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>07/03/2018</u>

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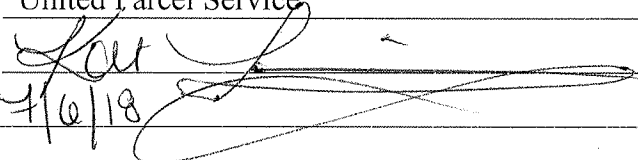
Name	<u>Andrew T. Sutton</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>7/3/2018</u>

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Name	<u>Kathleen Lunnigan</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>7/6/18</u>

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Name	<u>Kevin Neels</u>
Firm	<u>The Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Kevin Neels</u>
Date	<u>7/3/18</u>

CERTIFICATION

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Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u>NE Powers</u>
Date	<u>July 2, 2018</u>

CERTIFICATION

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Name	<u>Jacob Light</u>
Firm	<u>Bratne</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>[Signature]</u>
Date	<u>07/02/18</u>

CERTIFICATION

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Name	Angela Lam
Firm	The Brattle Group
Title	Research Analyst
Representing	United Parcel Service
Signature	
Date	7/2/2018

CERTIFICATION

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Name	<u>Nathan Basch</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>7/2/18</u>

CERTIFICATION

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Name	<u>Edward Cho</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>July 3, 2018</u>

CERTIFICATION

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Name	<u>Ezra Frankel</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>July 2nd, 2018</u>

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Name	<u>Jill Moraski</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>July 6, 2018</u>